Anwar et al v. Fairfield Greenwich Limited et al Doc. 285

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Honorable Theodore H. Katz
United States Magistrate Judge
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

RE: *Anwar v. Fairfield Greenwich Group*, Master File No. 09 CV ~~0018~~ 0118
Fairfield Sentry Limited v. Fairfield Greenwich Group, No. 09 CV 5650

Dear Judge Katz:

This firm represents Kenneth M. Krys and Christopher D. Stride in their roles as British Virgin Islands court-appointed liquidators (the "Liquidators") of and for Fairfield Sentry Limited ("Fairfield Sentry"). On behalf of the Liquidators, we write to request an extension, pursuant to Fed. R. Civ. P. 6(b)(1)(A), of the Liquidators' deadline to serve certain defendants in the above-captioned action. We address this letter to Your Honor in accordance with Judge Marrero's September 22, 2009 endorsement of our letter dated September 21, 2009, in which Judge Marrero referred to you, *inter alia*, pretrial proceedings. If, however, the request contained in the present letter is a matter that needs to be addressed to Judge Marrero's attention, we will do so.

As the Court may be aware, Fairfield Sentry commenced the above-captioned action on May 29, 2009 by filing a complaint in the Supreme Court for the State of New York, County of New York. The action was removed to this Court pursuant to a notice of removal filed on June 19, 2009. The Federal Rules of Civil Procedure apply to actions removed to federal court and govern procedure after removal. *See* Fed. R. Civ. P. 81(c). Fed. R. Civ. P. 4(m) governs the time for service in a federal action and provides that service must be completed within 120 days after the complaint is filed. In an action that has been removed, the 120-day period runs from the date the action is removed to federal court. *See Coram Healthcare Corp. v. Cigna*, No. 00-cv-2677 (RMB), 2002 WL 32910044, *8 (S.D.N.Y. July 24, 2002) (a copy of which is enclosed herewith); *G.G.G. Pizza, Inc. v. Domino's Pizza, Inc.*, 67 F. Supp. 2d 99, 102 (E.D.N.Y. 1999). As the deadline for service, October 17, 2009 (120 days from June 19, 2009), has not yet passed, the Liquidators' request for an extension of the deadline for completion of service is made pursuant to Fed. R. Civ. P. 6(b)(1)(A).

Pursuant to Fed. R. Civ. P. 6(b)(1)(A), "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires." "Absent bad faith on the part of the movant or undue prejudice to the other parties to suit, discretionary extensions [pursuant to Fed. R. Civ. P. 6(b)(1)(A)] should be liberally granted." *See Nat'l Equipment Rental, Ltd. v. Whitecraft Unlimited, Inc.*, 75 F.R.D. 507, 510 (E.D.N.Y. 1977).

Here, there is good cause for the Court to extend the time for the Liquidators to serve those defendants who have not yet been served with process. Messrs. Krys and Stride were appointed as liquidators by order of the High Court of the British Virgin Islands on July 21, 2009, subsequent to the filing of the complaint in this action by Fairfield Sentry. Seward & Kissel LLP, counsel to Fairfield Sentry, was able to complete service on 19 out of 24 defendants.[1] The remaining five defendants, Philip Toub, Corina Noel Piedrahita, Andres Piedrahita, Brian Francouer and Fairfield Greenwich Group, have not been served, nor have we been able to prevail upon their attorneys to accept service.[2] In this regard, we note that it is our current understanding that defendants Corina Noel Piedrhita, Andres Piedrahita and Brian Francouer are living outside the United States. As such, assuming that our understanding as to the location of the defendants is correct, the Federal Rules do not impose the 120-day time period for service. *See* Fed. R. Civ. P. 4(m).

Given that the Liquidators are in the process of transitioning into this litigation, the Liquidators request that the Court exercise its discretion to grant the Liquidators a 60-day extension of the deadline to serve Philip Toub, Corina Noel Piedrahita, Andres Piedrahita, Brian Francouer and Fairfield Greenwich Group to the extent that these defendants are located in the United States and subject to the time limit for service as stated in Fed. R. Civ. P. 4(m).

We are available to answer any questions that the Court may have.

Granted.

Respectfully,

Andrew Dash

SO ORDERED

10/27/09

THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE

Encl.

cc: All Counsel (via electronic mail, w/ encl.)

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1 Yesterday, Your Honor directed that this firm be substituted for Seward & Kissel LLP (Fairfield Sentry's counsel of record), and directed further that the caption of the Action be amended to reflect the appearance of the Liquidators on Fairfield Sentry's behalf.

2 We have included Philip Toub in this list in an abundance of caution, although we are advised that his counsel has accepted service on his behalf.

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